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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

April 12, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: ~~Legislative Liaison Officer-~~
~~Department of Justice~~
~~Central Intelligence Agency~~
~~Department of State~~
~~Department of Defense~~
~~National Security Council~~

SUBJECT: Huddleston - Leahy amendment to the Intelligence Authorization which deals with counterintelligence and official representation.

(Markup scheduled for shortly after the Easter recess.)

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than CLOSE OF BUSINESS, TUESDAY, APRIL 17, 1984.

Questions should be referred to Tracey Lawler
the legislative analyst in this office.

(395-4710)

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: Russ Neely
Jim Barie

SPECIAL

HUDDLESTON-LEAHY PROPOSAL

INTELLIGENCE AUTHORIZATION ACT FOR FY 1985

Counterintelligence and Official Representation

(a) It is the sense of the Congress that the numbers, status, privileges and immunities, travel, accomodations and facilities within the United States of official representatives of foreign governments that engage in intelligence activities within the United States harmful to the national security of the United States should not exceed the numbers, status, privileges and immunities, travel, accomodations and facilities within such countries of official representatives of the United States.

(b) The number of persons granted diplomatic status, privileges and immunities and the right of entry into the United States, as otherwise authorized by law, whose principal purpose of entry is employment with or performance of official functions for the embassy or consulate(s) of any foreign government determined by the President to be engaged in intelligence activities within the United States harmful to the national security of the United States may not exceed the number of United States nationals granted similar status and rights in such country: Provided that additional persons may be granted right of entry and diplomatic status upon determination by the President that such action would be in the best interests of the United States; and provided further that the limitations of this subsection shall not apply to dependants or spouses not employed by or who do not perform official functions for any such embassy or consulate.

(c) The President shall report annually to the Committee on Foreign Relations and Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and Permanent Select Committee on Intelligence of the House of Representatives concerning the actions taken to implement the objectives of subsections (a) and (b) of this section.

(d) Section 203(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4303(a)) is amended to strike the following: "The Director shall be an individual who is a member of the Foreign Service, who has been a member of the Foreign Service for at least ten years, who has significant administrative experience, and who has served in countries in which the United States has had significant problems in assuring the secure and efficient operations of its missions."

EXPLANATION OF HUDDLESTON-LEAHY PROPOSAL ON COUNTERINTELLIGENCE AND OFFICIAL REPRESENTATION

The purpose of the proposed Intelligence Authorization Act language is to provide bipartisan Congressional support for Executive Branch efforts to strengthen U.S. counter-intelligence capabilities by reducing disparities between the official representation in the U.S. of foreign governments that engage in intelligence activities harmful to our national security and U.S. official representation in such countries.

The Administration's requests for increased funds for the FBI foreign counterintelligence program in FY 1984 and FY 1985 have been based on clear evidence of substantial growth in the hostile intelligence presence within the United States. At the same time, in countries that pose serious intelligence threats to the United States, our representatives are sometimes fewer in number and subject to restrictions and conditions that do not exist in the United States.

Subsection (a) would express the sense of the Congress that such disparities should be eliminated. Subsection (b) would require the President to eliminate such disparities with regard to the number of embassy or consular officials, unless he determines that other national interests justify an imbalance. Subsection (c) would require regular reports to the appropriate congressional committees on actions taken to implement these objectives. Subsection (d) would repeal statutory provisions that bar persons having primarily intelligence or counterintelligence experience from serving as Director of the Office of Foreign Missions.

Nature of the Problem

The FBI estimates that 30-40 percent of the official representatives from Soviet Bloc countries in the U.S. are intelligence officers. Their operations include all forms of espionage aimed at national secrets and private technological data, and they have done severe and extensive damage to U.S. national security. Counterintelligence resources, despite significant actual and planned increases, will not be adequate to provide full coverage of these operations. Thus, the growing hostile intelligence threat makes it especially important to reduce disparities in official representation.

These disparities and actions that have been and can be taken to reduce them are discussed in a classified State Department report submitted to the Senate Foreign Relations Committee, the House Foreign Affairs Committee, and the House

and Senate Intelligence Committees on March 15, 1984. This report was requested in 1983 by the State Department Authorization Bill Conference Committee as a substitute for Senator Huddleston's amendment in the Senate bill calling for equivalence between Soviet and U.S. official representation.

There is a substantial imbalance in the number of Soviet nationals permanently assigned to Embassy and Consulate positions in the United States and the number of U.S. nationals permanently assigned to Embassy and Consulate positions in the Soviet Union. The Soviets have about 300 such personnel, while we have about 200. Other disparities involve official treatment, recreation facilities, informal travel limits, office locations, and housing accommodations.

The U.S. employs about 220 Soviet and third-country personnel to perform support tasks at our diplomatic and consular installations. Common tasks performed by these employees are those of clerk, receptionist, telephone operator, driver, gardner, translator, mechanic, charforce, laborer, painter, plumber, electrician, carpenter, and ruglayer. The Soviets hire virtually no local American staff and depend on their own nationals to perform the functions we normally assign to locally hired and third-country personnel.

In other East European countries the U.S. has some advantages. However, U.S. personnel must sometimes arrange domestic travel through government-controlled agencies. In the case of Poland, there is a wide disparity in commercial representation. Some 60-70 Polish commercial employees are permanently assigned to the 18 companies in the U.S. owned wholly or in part by the Polish government. The Bell-Zacharski case demonstrated that Polish intelligence uses such firms for espionage purposes. Although 22 American companies are represented in Poland, no U.S. citizen businessmen are permanently assigned to Poland.

Executive Branch Actions

The Executive Branch has begun to remedy these problems, and further steps are under consideration. The Foreign Missions Act of 1982 gave the State Department additional legal authority to impose reciprocal controls on facilities, accomodations, travel, and services. The February, 1984, annual report of the Office of Foreign Missions summarizes the accomplishments thus far. The Office has, for example, imposed additional travel controls and surcharges on Soviet

diplomats in response to Soviet treatment of U.S. diplomats. According to the report, "This has had a national security benefit, has improved the morale of our people in the USSR, and has offset the cost of controls on U.S. diplomats in the USSR." Other actions to enforce reciprocity with Soviet-bloc countries are under study.

The Foreign Missions Act does not regulate the number of official representatives of foreign governments in the U.S. Nor does the Office of Foreign Missions play a direct role in determining the size of either foreign missions in the U.S. or U.S. missions abroad. The question of whether to set a goal of eliminating disparities in this area is a matter for high-level policy decision.

Intent of the Proposal

The intent of the Huddleston-Leahy proposal is to establish a long-term objective endorsed by the Congress and to insure accountability for moving toward that goal. Rather than single out any particular countries, the language refers to "foreign governments that engage in intelligence activities within the United States harmful to the national security of the United States." The policy aim with respect to such countries is that the numbers, status, privileges and immunities, travel, accommodations and facilities within the U.S. of their official representatives should not exceed the number, status, privileges and immunities, travel, accomodations and facilities of official U.S. representatives within those countries.

Subsection (a) expresses the sense of Congress that this should be the policy objective.

Subsection (b) makes the President responsible for action to achieve this goal with respect to the number of persons granted diplomatic status, privileges and immunities and the right of entry into the United States for the performance of official embassy or consular functions. The President is to determine which countries are engaged in intelligence activities within the United States harmful to the national security of the United States, for the purposes of this provision. When such a determination is made, the number of such persons must not be allowed to exceed the number of United States nationals granted similar status and rights in that country.

The first proviso in subsection (b) recognizes that the President may require some flexibility in this area in order to accomodate other foreign policy and national security interests. Thus, additional persons may be granted right of

entry and diplomatic status upon determination by the President that such action would be in the best interests of the United States.

It is intended that equalization could be accomplished over a period of time, rather than immediately. Possible methods include negotiated modifications in existing ceilings; gradual attrition; refusal to allow replacements after expulsion for espionage; and other gradual measures. Numbers could also be equalized in part by requiring that more support staff in the U.S. be hired locally and by increasing the number of U.S. diplomats and support staff in the particular country.

A gradual equalization program implemented through a combination of methods over a number of years, perhaps with an established target date for achieving equivalence, would reduce the basis for protest or the possibility of retaliation.

Subsection (c) provides for annual reports by the President to the appropriate congressional committees on the actions taken to implement the objectives of subsections (a) and (b). Such reports should identify those countries that engage in intelligence activities within the United States harmful to our national security and any countries determined by the President to meet this standard for the purpose of subsection (b). In other respects, the reports should provide the type of information and analysis contained in the State Department report of March 15, 1984 with respect to all countries whose intelligence activities in the U.S. are harmful to the national security, regardless of whether or not such countries have been determined by the President to meet this standard for the purposes of subsection (b).

Subsection (d) affirms the importance of the position of Director of the Office of Foreign Missions in achieving the objectives of this proposal. The State Department Authorization Act passed in 1983 required that the Director be appointed by the President and confirmed by the Senate, gave the Director the rank of ambassador, and required that the Director be "a member of the Foreign Service, who has been a member of the Foreign Service for at least ten years, who has significant administrative experience, and who has served in countries in which the United States has had significant problems in assuring the secure and efficient operations of its missions as the result of the actions of other countries." Subsection (d) repeals the Foreign Service qualifications so as not to foreclose appointment of an official having significant foreign intelligence or counterintelligence experience.

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The first Director, James Nolan, was Deputy Assistant Director for the FBI Intelligence Division and one of the most experienced and widely respected counterintelligence experts in the U.S. government. There is no indication that he has done less than an excellent job, as demonstrated by the accomplishments described in the first annual report of the Office of Foreign Missions.

No change would be made in the requirement of Senate confirmation, which makes the appointment subject to the scrutiny of the Senate Foreign Relations Committee, or in the granting of ambassador status.